

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GREGORY L. HUGHES,

Plaintiff,

v.

ORLANDO HARPER, et al.,

Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

2: 14cv0585

Electronic Filing

Judge David Stewart Cercone

**MEMORANDUM ORDER**

This case was commenced on May 7, 2014, and was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court for Magistrate Judges. At the time the case was initiated, Plaintiff, Gregory L. Hughes, was incarcerated at the Allegheny County Jail (“ACJ”).

On September 10, 2014, Defendants Orlando Harper, Warden of ACJ; Sgt. Kass; Sgt. Coulter; Sgt. Nort; and Inspector Kearns (collectively referred to as the “County Defendants”) filed a motion to dismiss or for a more definite statement (ECF No. 18). The magistrate judge granted the motion for more definite statement and ordered Hughes to file an Amended Complaint. Plaintiff then filed a “Motion to Amend Civil Complaint” (ECF No. 33), which despite its title was, in substance, an amended complaint rather than a motion to permit amendment. The magistrate judge granted the motion and ordered that the motion be deemed an amended complaint. ECF No. 33 remains the operative complaint.

On June 19, 2015, the County Defendants filed a Motion to Dismiss (ECF No. 36). Hughes responded in opposition (ECF No. 38), to which the County Defendants filed a Reply

(ECF No. 39). On October 2, 2015, Magistrate Judge Eddy filed a Report and Recommendation (ECF No. 40) recommending that the motion be granted in part and denied in part, without prejudice, to the County Defendants filing a summary judgment raising the same defenses on a more fully developed factual record. The parties<sup>1</sup> were served with the Report and Recommendation and advised that they had until October 19, 2015, to file written objections to the Report and Recommendation. Only the County Defendants filed objections (ECF No. 42).

The Court finds that the County Defendants' Objections do not undermine the recommendation of the Magistrate Judge. The County Defendants continue to advance the same arguments that they made in their Motion to Dismiss. As the report noted, the Amended Complaint is a far cry from a model of clarity. However, given the liberal construction afforded to the pro se complaint, this Court agrees with the recommendation that the Amended Complaint alleges sufficient allegations to withstand a *Twombly / Iqbal* challenge. As noted in the report, factual discovery is needed to further develop and resolve Plaintiff's claims.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and the Objections thereto, the following order is entered:

**AND NOW**, this 23rd day of November, 2015, it is hereby **ORDERED, ADJUDGED AND DECREED** that the Motion to Dismiss filed by the County Defendants (ECF No. 36) is **GRANTED IN PART AND DENIED IN PART** as follows:

a. The Motion is **GRANTED** with respect to the County Defendants' request to dismiss Defendant Orlando Harper, Warden. Defendant Harper is hereby dismissed with

---

<sup>1</sup> Plaintiff was served with the Report and Recommendation at his listed address of record, Gregory L. Hughes, 444 Fourth Street, Braddock, PA 15104. The County Defendants were served through their attorney via CM/ECF electronic mail.

prejudice from this case. The Court will not provide Plaintiff with leave to amend as amendment would be futile;

b. The Motion is **DENIED** with respect to the County Defendants' request to dismiss Defendants Sgt. Kass, Sgt. Coulter, Sgt. Nort, and Inspector Kearns;

**IT IS FURTHER ORDERED** that the Report and Recommendation (ECF No. 40) dated October 2, 2015, is **ADOPTED** as the Opinion of the Court.

**IT IS FURTHER ORDERED** that Defendants Sgt. Kass, Sgt. Coulter, Sgt. Nort, and Inspector Kearns shall file a responsive pleading in accordance with Federal Rule of Civil Procedure 12(a)(4)(A).

**IT IS FURTHER ORDERED** that this matter is remanded back to the magistrate judge for all further pretrial proceedings.

s/ DAVID STEWART CERCONI  
David Stewart Cercone  
United States District Judge

cc: GREGORY L. HUGHES  
444 Fourth Street  
Braddock, PA 15104  
(Via First Class Mail)

Paul R. Dachille  
Allegheny County Law Department  
(Via CM/ECF Electronic Mail)